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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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Case No. 12-12020-mg

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In the Matter of:

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RESIDENTIAL CAPITAL, LLC, ET AL.,

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Debtors.

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United States Bankruptcy Court

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One Bowling Green

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New York, New York

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April 11, 2013

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3:05 PM

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B E F O R E:

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HON. MARTIN GLENN

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U.S. BANKRUPTCY JUDGE

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1  
2 [CC: Docket No.s 3280 through 3284] Debtors' Motion for an  
3 Order Pursuant to Sections 363(b) and 503(c)(3) of the  
4 Bankruptcy Code Authorizing (I) Implementation of (A) A Key  
5 Employee Retention Plan for Certain Non-Insiders and (B) Key  
6 Employee Incentive Plans for Certain Insiders, and (II) Payment  
7 of Any Obligations Arising Thereunder as Administrative  
8 Expenses  
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UNITED STATES DEPARTMENT OF JUSTICE

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Office of the United States Trustee

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New York, NY 10004

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BY: BRIAN MASUMOTO, ESQ.

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. All right. We're here  
3 in Residential Capital, number 12-12020. Mr. Marinuzzi?

4 MR. MARINUZZI: Good afternoon, Your Honor. For the  
5 record, Lorenzo Marinuzzi, Morrison & Foerster on behalf of the  
6 debtors.

7 We're here this afternoon, Your Honor, on the debtors  
8 motion for an order under Section 363(b) and 503(c)(3)  
9 authorizing the implementation of a key employee retention plan  
10 and a key employee incentive plan and payment of obligations  
11 arising thereunder as administrative expenses. We filed a  
12 motion on March 20th and there was one objection filed to the  
13 motion. That was the objection of the United States Trustee.

14 Your Honor, these programs were carefully developed  
15 after considerable discussion and review with our creditors'  
16 committee. The creditors' committee is on board with these  
17 KERP and KEIP programs. It took a very lengthy period of time  
18 to get the committee there and there were many discussions and  
19 revisions to the program between the time we initially set  
20 forth to put it together and ultimately filed and sought  
21 approval from this Court.

22 And the motion is supported by the declaration of John  
23 Dempsey of Mercer, the declaration of Ronald Greenspan of FTI  
24 who also submitted a supplemental declaration along with our  
25 reply papers, Pamela West, an independent board member and

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1 member of the compensation committee of the board as well as  
2 Tammy Hamzehpour, who is the chief business officer of the  
3 debtors. Each is here in court today and available to answer  
4 the Court's questions or any questions the U.S. Trustee would  
5 like to ask them under oath. At some point, Your Honor, I'm  
6 going to submit the affidavits, declarations into evidence.

7 And there are three aspects to this program. The  
8 first aspect, and I think the least controversial is the key  
9 employee retention plan. The purpose -- I'm sorry; the  
10 expected cost of that program is 4.4 million dollars and it  
11 covers 155 noninsider key employees who the debtors believe are  
12 critical to their operations post-sale. It's designed to keep  
13 the employees there through the end of the year.

14 Then, there are two KEIP aspects to the program.  
15 There's one that applies to six senior level employees; we  
16 refer that one as the "estate KEIP". And then there's a  
17 separate KEIP that covers two individual senior officers and we  
18 refer to that one as the "executive KEIP". These key programs  
19 have drawn the objection from the United States Trustee. Let  
20 me describe, generally, the estate KEIP.

21 The aggregate payments under the estate KEIP if the  
22 covered employees achieve a target, is 2.1 million dollars and  
23 to the extent that they have outstanding results, it could  
24 climb as high as 2.7 million dollars.

25 The estate KIEP is focused on two goals: managing

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1 expenses and maximizing the value of the debtors' remaining  
2 assets. I don't want to get too deep into the weeds here, Your  
3 Honor. I'll try to be general but I'm happy to get into  
4 specifics should the Court have any questions.

5 Now, there are --

6 THE COURT: Just tell me, the estate KEIP, what's the  
7 dollar range? Do you know?

8 MR. MARINUZZI: It's -- assuming target is met --

9 THE COURT: Yes.

10 MR. MARINUZZI: -- it's 2.1 million dollars and it  
11 could go to approximately 2.7 million dollars and --

12 THE COURT: Oh, I thought it was 2.2 but it's 2.1?

13 UNIDENTIFIED SPEAKER: It's closer to 2.2.

14 MR. MARINUZZI: It's closer to 2.2.? Sorry; closer to  
15 2.2.

16 And so there are two aspects of the program. Fifty  
17 percent of it is weighted towards meeting budget expenses and  
18 fifty percent of it is targeted towards maximizing the value of  
19 the assets that are being sold.

20 On the expense side, the company has carefully  
21 prepared a wind-down budget. The budget was vetted with the  
22 committee. The overall budget for the wind-down includes many  
23 things that are beyond the control of the senior officers  
24 covered by this program. So there was a focus on those  
25 expenses where they can actually have some impact on either

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1 meeting, exceeding, or failing to meet. So it does include,  
2 for example, the cost of the foreclosure review which they just  
3 can't control.

4 We provided to the Court a presentation that  
5 identified the categories of expenses that are covered and it  
6 really is limited to the operating expenses. We didn't file it  
7 for fear that if counterparties or other service providers that  
8 management might have discussions with to try to find cost  
9 savings heard of what the budget amounts were, it might make it  
10 difficult to actually negotiate savings.

11 THE COURT: Is this what was delivered to my chambers  
12 yesterday?

13 MR. MARINUZZI: It was, Your Honor. It was. It's  
14 actually the last page of that presentation.

15 THE COURT: Okay.

16 MR. MARINUZZI: Which we've also provided to the U.S.  
17 Trustee and the committee.

18 THE COURT: All right. Does anybody other than the  
19 U.S. Trustee and the committee have this material?

20 MR. MARINUZZI: They do not, Your Honor. They do not.  
21 And again, it's the sensitivity of letting --

22 THE COURT: Yes.

23 MR. MARINUZZI: -- the service providers know.

24 THE COURT: You also have a sealing motion as to  
25 certain materials?



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1 MR. MARINUZZI: Correct, Your Honor. And those are  
2 more particular to the --

3 THE COURT: The individuals would be recipients of  
4 the --

5 MR. MARINUZZI: The executive KEIP.

6 THE COURT: -- awards. Right.

7 So that takes care of the expense metric. Then,  
8 there's the sale metric. And this was put together to  
9 accomplish two goals: monetize assets quickly but to do so in  
10 a way where we're not giving away value. In other words, let's  
11 be smart about how we liquidate these assets and turn them into  
12 cash for the estate. So let me set the stage, Your Honor.

13 As of February 28th, the debtors had approximately  
14 1.06 billion dollars of FHA/VA loans, matured loans, and  
15 advances. It's book value. They also have approximately 300  
16 million dollars in book value of what I'll call "other assets."  
17 It's mostly scratch and dent loans, REO properties, interest in  
18 foreign affiliates, equity; it's really hard -- in many  
19 respects hard to value assets.

20 So this KEIP program, on the sales side, separated  
21 those assets into two different pools recognizing that they're  
22 just different asset classes. The company and its advisors  
23 looked at each of these two groups; the FHA/VA group of assets  
24 and the other assets and said what can we strive to turn into  
25 cash by year-end? And so, with respect to the loans, they

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1 looked at the risk profile of the loans, because some are more  
2 easy to sell than others, and they picked a bucket of those  
3 assets and said this is what we're going to target to sell.  
4 And so they're different ways of selling these assets as the  
5 Court is aware. You can have a bulk sale or you can have a  
6 process by which you either sell them in smaller bits or have  
7 other ways of trying to get value out of them. And to the  
8 extent the company tries a bulk sale approach, the target  
9 changes because the idea is if you're going to use bulk sales  
10 you should strive for a higher target.

11 Now, depending upon how much cash is realized from the  
12 sales, these participants will earn a threshold bonus, meaning  
13 they've met ninety percent of the target, the target bonus or a  
14 higher bonus up to 107.5 percent of target. And this is  
15 measured against the cash that actually comes in collected.

16 THE COURT: I think the thing that -- and I'm sure  
17 you're going to cover it, but the thing that I'm most  
18 interested in hearing about, what I see as the core of the U.S.  
19 Trustee's objection is the time they filed the objection, you  
20 provided them with additional information since then, that the  
21 metrics you established in both KEIPs -- in both KEIPs, are  
22 they sufficiently a reach such that they're incentivizing to  
23 the potential recipients to achieve those goals?

24 So I appreciate -- I've gone through them with some  
25 care and I understand -- I think I understand what the various

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1 thresholds in metrics you've chosen. The thing that I'm most  
2 interested in hearing about is why those -- why it is a stretch  
3 to achieve the metrics such that this is incentivizing rather  
4 than retentive?

5 MR. MARINUZZI: Understood. And, Your Honor, let's  
6 start with the question what are they doing because that was  
7 the question the U.S. Trustee asked them. In the U.S.  
8 Trustee's papers, there's sort of a suggestion that since these  
9 are federally insured loans, the FHA/VA loans, that they're  
10 collect at a hundred cents anyway. And I guess in theory, were  
11 people to want to wait around for up to seven years to actually  
12 make insurance claims, and no one is advocating that, then I  
13 guess that's correct. But what the company has done has  
14 implement a strategy, which they haven't done before. These  
15 loans have sat on the books. So this is something that they're  
16 trying to -- they haven't tried before; it's turning a large  
17 quantity of these assets that since they were assumed to be  
18 valued very highly, they just stood on the company's books as  
19 they collected cash insurance, they collected it but now  
20 they're being told we're done, we've got to turn this into cash  
21 and get it out to our creditors.

22 And when you think about, for example, not too long  
23 ago there was an attempt at a bulk sale of 125 million dollars  
24 of these loans and the company looked at the risk profile, and  
25 these were -- these were the ones that were supposed to be the

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1 most easy to sell, and the bids were just not good. That shows  
2 that this is a challenge. And when you look at the metrics and  
3 the percentage of recovery, the recovery, percentage of the  
4 recovery rate is close to book that you can get because that's  
5 another component of the sale metrics, that sale alone or the  
6 failure to close that sale after bidding tells you how  
7 difficult this process is going to be. But it's more than  
8 that. They have to do things that they haven't done before in  
9 this context. So what are they doing? They are now trying to  
10 take these loans and put them into securitizations. And people  
11 will buy loans but they'll buy them at a price that obviously  
12 makes sense for the buyer and when you look at the metrics and  
13 the percentages we're trying to recover here, they're not easy  
14 to meet.

15 They're also trying to accelerate the process by which  
16 the government pays for these insurance claims. So it means  
17 people are going to have to be on top of the government to say  
18 where's our check, we have a loss, here's the proof, here's the  
19 amount, here's the principal, here's what we ultimately got for  
20 it, please pay us. They have to make a concerted effort to be  
21 on top of the servicers for these mortgages. They're on our  
22 books but we don't service them.

23 THE COURT: Is Ocwen servicing?

24 MR. MARINUZZI: Ocwen is servicing these mortgages.  
25 Correct. And so sometimes foreclosures take a while, sometimes

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1 paperwork takes a while to get processed. There's a deadline  
2 of December 31st. That's the measuring date for this program.  
3 So these folks have to get on top of Ocwen for these  
4 foreclosures and make sure that they're processed the way  
5 they're supposed to be processed being time sensitive. It's  
6 not something they're used to doing.

7           They're also implementing borrower programs. Your  
8 Honor may recall in the first day pleadings there was this  
9 program called cash-for-keys and it was a program designed to  
10 expedite the foreclosure process and effectively pay the  
11 borrower to walk away from the foreclosure process and the  
12 house. Those are the types of programs that senior management  
13 is creating and implementing. Also, part of the strategy  
14 getting as much value back in to go after the insurance  
15 proceeds, because you have to foreclose before you can go after  
16 the insurance proceeds, that's something they haven't done  
17 before in this context.

18           They're also now undertaking a more extensive review  
19 of these loans or some more extensive, but they're reviewing  
20 these loans to see if they qualify for HAMP and they're trying  
21 to process the HAMP applications to see if they could modify  
22 these loans and then once they modify them, go to the  
23 government and try to get some more money out of the government  
24 on account of a guarantee.

25           So this is a strategy that, in this context, they

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1 haven't implemented before. If history tells us anything, at  
2 the last bucket of loans that were put together, and these were  
3 the good loans, and I don't know if the bid was actually  
4 public, but I can represent to the Court that it was nowhere  
5 near --

6 THE COURT: No, I remember when you pulled --

7 MR. MARINUZZI: Yes.

8 THE COURT: -- the sale of the loans because the bids  
9 weren't satisfied.

10 MR. MARINUZZI: Right.

11 THE COURT: I'm aware of that.

12 MR. MARINUZZI: They were just bad bids. So that's  
13 what they're doing, Your Honor. And that's why as I look at  
14 this, and the declarations bear this out, this is not a slam-  
15 dunk. This is a program that they have to hit on all cylinders  
16 to --

17 THE COURT: Who set the metrics and how was that done?

18 MR. MARINUZZI: It was done in -- it was a combination  
19 of the people of the company, obviously, how have the expertise  
20 and do this, Mercer and FTI. FTI who knows this business  
21 having been there for years just as well as anybody also was  
22 part of setting up the metrics. But I think also it wasn't  
23 done in a vacuum. It was done based on the information  
24 available to them which included what happened with these loans  
25 that they tried to sell and couldn't sell.

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1 THE COURT: I guess a fair question is it the people  
2 who are going to receive the awards who set the metrics?

3 MR. MARINUZZI: Your Honor, I'm sure they were  
4 consulted but I can tell you that Jim Whitlinger who's not part  
5 of this program, who is part of the executive KEIP and whose  
6 metrics have nothing to do with this was one of the lawyers  
7 that I spoke with extensively in connection with that loan  
8 sale. So he's not part of this but he was part of the process  
9 of putting it together I'm sure. These metrics were also  
10 vetted very carefully by the UCC. And as I said, there were  
11 lots of discussions with the UCC advisors about setting these  
12 targets at a level that really were a stretch and I'm sure that  
13 if the committee had reservations about whether these were slam  
14 dunk targets, we'd know about it.

15 So I hope that answers the question. But I forgot a  
16 metric and I just want to go back because the second aspect of  
17 the sale, to make sure we get as close to book as possible, is  
18 the recovery rate metric which really just measures the  
19 variation against book. And that is -- accounts for thirty  
20 percent of the sale side of the KEIP award.

21 So you've got the recovery which is fifty-five, you've  
22 got the recovery rate on these loans and advances which is  
23 thirty percent and then we'll go to the -- what I'll call the  
24 other assets.

25 THE COURT: And how is the split between FHA/VA

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1 recovery metric and non-FHA/VA recovery metric because you've  
2 obviously separated a lot of these -- those two pools of  
3 assets?

4 MR. MARINUZZI: I think when you look at --

5 THE COURT: The one's insured and the other's not. Is  
6 that correct?

7 MR. MARINUZZI: When you look at the balance of the  
8 assets, you've got a billion plus of FHA/VA assets and then  
9 you've got 300 book value of the other assets. So it just  
10 seemed like a fair split and that's how the allocation was  
11 done.

12 THE COURT: Um-hum.

13 MR. MARINUZZI: And so, let's turn to the other  
14 assets. They are a smaller share as I just mentioned and the  
15 recovery metric for these assets is ten percent and the  
16 recovery rate is five percent. And as you would expect given  
17 that they're -- they have a book value but who knows what  
18 equity is worth to the extent it's sold. And the scratch and  
19 dent loans, they're not federally insured, who knows what  
20 they're worth? The metric is set at a lower percent.

21 THE COURT: That's a term I'm really not familiar with  
22 so tell me about scratch and dent.

23 MR. MARINUZZI: Scratch and dent loans are loans that  
24 they were -- we had to buy them back for lack of a better  
25 description because they had some defect or deficiency and



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1 we're trying to correct them. We might not be able to correct  
2 them but that's -- they refer to them as scratch and dent  
3 loans.

4 Now, just as an example, the recovery rate -- I'm  
5 sorry; the target recovery rate for the FHA/VA loans is in the  
6 nineties -- that's the percentage -- for these assets. And the  
7 one that's actually being measured for this metric, it's sixty-  
8 five percent. And that just goes to show you the difference in  
9 the asset class and the quality of the assets.

10 THE COURT: That's in what you gave me yesterday --

11 MR. MARINUZZI: Correct.

12 THE COURT: -- that shows that?

13 MR. MARINUZZI: Correct.

14 Your Honor, unless Your Honor has questions about this  
15 KEIP --

16 THE COURT: No.

17 MR. MARINUZZI: -- I'll turn to the executive KEIP.

18 THE COURT: Go ahead.

19 MR. MARINUZZI: Okay.

20 So the executive KEIP, Your Honor, was put together  
21 for two individuals whose experience of the company, the roles  
22 each played, and the relationships with Ginnie Mae, frankly,  
23 are unique to them. And one is Jim Whitlinger, the CFO of the  
24 debtors, the second is Patrick Flemmings (sic) the debtors'  
25 capital markets officer.

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1 THE COURT: They're leaving May 3rd?

2 MR. MARINUZZI: Unless they're asked to stay, they are  
3 leaving at the end of April, May 3rd. But what they're doing  
4 is something they've started to do before we even filed the  
5 papers. And so one of my personal concerns as we were  
6 structuring this program and going back-and-forth with the  
7 committee on these metrics and we didn't want to file separate  
8 motions for each KEIP was the timing.

9 THE COURT: Yes, and I know your firm had contacted  
10 chambers and wanted to get an earlier hearing on this so I'm  
11 not faulting them why -- why am I hearing it today when two  
12 people are supposed to leave, perhaps, in early May. It's just  
13 with my calendar, I just couldn't hear it before today.

14 MR. MARINUZZI: Right. And, Your Honor, as I  
15 mentioned before, there were different iterations of this  
16 program. It was initially contemplated that they would stay  
17 through June 30th. And so when we devised the program  
18 initially, it was a program through June 30th. The committee  
19 wanted the flexibility, and we understand that, of determining  
20 at some point at the end of April that there wasn't a need to  
21 keep these two individuals through May and through June and  
22 that's why we have this staggered time frame for this process.  
23 So it wasn't as we originally contemplated it but it was a  
24 result of negotiations with the committee.

25 And so the metrics for this plan, Your Honor, really

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1 are centralized on the Ginnie Mae relationship and the value  
2 the estate receives through Ginnie Mae loans. And the metrics  
3 are broken down, as I said, by time. So let's look at the  
4 first measurement of time; it's March 1st through April 30th.  
5 And there's 45 percent of this particular metric is tied to  
6 receipt of 143 million dollars. Well, the target's actually  
7 158 million dollars of proceeds from the delivery of Ginnie Mae  
8 new production and modifications for the period March 1st  
9 through April 30th.

10 The second component for this time period is a  
11 commitment from Ginnie Mae for the return of fifty-five million  
12 dollars of reserves. And, Your Honor, we filed under seal the  
13 declaration of Ronald Greenspan in our reply on these points  
14 because there's certain sensitivities there. To the extent  
15 Your Honor has particular questions, Mr. Greenspan's here. I  
16 don't want to ignore them but I'm just trying to be sensitive.

17 So -- and then ten percent of that is obtaining an  
18 agreement by Ocwen to continue to purchase the MSRs on the new  
19 pools that we actually are able to put together with Ginnie  
20 Mae. And we have to get an extension through the end of the  
21 year and we have to know we have that extension by April 30th.

22 Now, importantly, the estate makes money through this  
23 relationship. So to the extent we can continue to do that and  
24 it's because of the work that these individuals did before  
25 today that we even have it through June 30th, we'll continue to

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1 make money. Effectively, they're paying for themselves by  
2 being successful here.

3 Same kinds of metrics are carried over through April  
4 or May but the amounts change. And to be specific, if these  
5 individuals meet their target, and there's no reaching above  
6 the target, its target -- there's no 107.5 percent for these  
7 two individuals, they collectively will earn 400,000 dollars  
8 for doing this.

9 If the program is extended for an additional month  
10 with the consent of the executives and the committee, it's  
11 another hundred thousand dollars that they'll split. And if  
12 it's extended through June, then there's another additional  
13 hundred thousand dollars that they'll share. So the entire  
14 cost of this program assuming they hit each and every one of  
15 the targets, is 600,000 dollars.

16 In my view, given the value that the estate would  
17 obtain if they're successful in meeting the targets, it pays  
18 for itself and then some.

19 Your Honor, as far as what they're doing, it's  
20 difficult for me to address that given the sensitivities.  
21 They're in the papers, they've been provided in unredacted form  
22 to the U.S. Trustee and to the Court. If Your Honor has any  
23 questions about what they're doing, the negotiations, the  
24 sensitivities, we can discuss them but I think we just have to  
25 ask people to excuse themselves from the courtroom.

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1 THE COURT: Let me hear from Mr. Masumoto.

2 MR. MARINUZZI: Thank you.

3 THE COURT: Well, first, I assume -- does the  
4 committee want to be heard?

5 MR. ZIDE: Very briefly, Your Honor.

6 THE COURT: All right.

7 MR. ZIDE: Stephen Zide from Kramer Levin on behalf of  
8 the committee.

9 First off, I agree with everything Mr. Marizuni (sic)  
10 said about the committees' efforts here, the process here. The  
11 committee was very actively involved. I myself was on numerous  
12 phone calls. We had an in-person meeting going through  
13 everything they had proposed.

14 With respect to --

15 THE COURT: I thought the committee was a lay-up on  
16 this.

17 MR. ZIDE: We were not a lay-up, let me tell you.

18 THE COURT: I'm teasing.

19 MR. ZIDE: A lot of the people in the courtroom can  
20 vouch for that.

21 THE COURT: The vernacular and jargon that's gotten  
22 caught up in --

23 MR. ZIDE: Did you hear the laughter?

24 THE COURT: Yes. The vernacular and jargon that's  
25 gotten caught up in KEIPs and KERPs --

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1 MR. ZIDE: Yes. In fact, Your Honor, the program that  
2 you have before you today was changed significantly from what  
3 we had originally seen both in the monetary amount that would  
4 be paid out and in the metrics involved here. And just in  
5 particular on two of the metrics on the estate KEIP, first,  
6 they are split; asset recoveries and budget. Every budget  
7 we've seen in this case has been more than the last budget. So  
8 if the estates could keep to the budget that they have put  
9 forward for these estate -- for the executive KEIP, we'd be  
10 very happy with that. We think that is a good budget if they  
11 can achieve that.

12 On the FHA receivables and bringing that cash in, the  
13 original program they had put together, all that was was gross  
14 amount. We had added in the entire component of a percentage  
15 recovery on those assets. We thought that was very important  
16 so that these employees were not rushing to bring money in  
17 without taking into account what kind of recovery they're  
18 getting on that. And that's, like, I believe thirty-five  
19 percent of that metric right now. And if they are able to  
20 bring in the amount of money that they anticipate bringing in  
21 with that recovery metric, we think that would be very  
22 favorable and it only will benefit the estates and it will lead  
23 to projections and cash in the estate on what we are  
24 anticipating and what we are hoping for for plan negotiations  
25 and as we look at what's going to be left here and how the

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1 supply is going to be divided up.

2 So we are happy with these metrics. We were very  
3 actively involved and we do request the approval of this  
4 program.

5 THE COURT: Thank you, Mr. Zide. Mr. Masumoto.

6 MR. MASUMOTO: Thank you. Good afternoon, Your Honor.  
7 Brian Masumoto for the Office of the United States Trustee.

8 Your Honor, you put your finger on the exact concern  
9 that our office had in dealing. Essentially this issue  
10 devolves -- falls down to the issue of whether or not the  
11 metrics in this case are sufficiently incentivizing, or  
12 sufficiently -- whether they're not retentive. To the extent  
13 that they're retentive our position's, obviously, that Section  
14 503(c)(1) would apply and so would the restrictions thereunder.

15 THE COURT: So I thought when you initially filed  
16 your -- when I read your motion when you initially filed your  
17 objection I certainly understood why you were taking -- the  
18 questions you raised. And you didn't just say no, never; you  
19 raised the issue specifically, has the debtor demonstrated by a  
20 preponderance of the evidence that the metrics selected are  
21 sufficiently challenging -- I'll use that term for now -- such  
22 that they're incentivizing, rather than retentive. And I  
23 thought you made some fair points, and the debtor has come back  
24 with additional information. And what's your position now?

25 MR. MASUMOTO: Your Honor, at this point,

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1 unfortunately, our position is that we believe that the debtor  
2 still has not carried its burden of establishing that the  
3 metrics are sufficiently incentivizing.

4 And if I may, there are four points that I'd certainly  
5 like to address --

6 THE COURT: Sure.

7 MR. MASUMOTO: -- at this time. Two are not typically  
8 regarded. But just as part of the background in this case, and  
9 I'm trying to be sensitive to the materials that were given to  
10 us that are not made public.

11 THE COURT: Yeah. I don't want to deal with that  
12 issue separately; I'm sensitive to it as well. I feel very  
13 strongly in open public records in bankruptcy cases, and I  
14 don't know what your position on sealing is. I did think, you  
15 know, the spreadsheet that showed the amounts that would go to  
16 individuals my reaction is it's appropriately maintained as  
17 confidential. The aggregate numbers, and maybe something about  
18 the breakdown, I think ought to be public, but dollars that  
19 would go to specific people, what's your position on that?

20 MR. MASUMOTO: We do realize the sensitivity of that  
21 amount. However, certain of the information, and that's why  
22 even in our response -- we did have the spreadsheet prior to  
23 filing our response and we alluded to, but very generally  
24 without identifying individuals.

25 THE COURT: Absolutely.



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1 MR. MASUMOTO: And one of the concerns that I'd like  
2 to mention is that if you look at the spreadsheet, virtually  
3 everyone had an increase in base pay. And as we mentioned in  
4 our papers, we thought, although it was a little sensitive,  
5 that one insider got -- received an almost sixty-six percent  
6 increase in its base pay.

7 THE COURT: I mean, on that point, Mr. Masumoto,  
8 historically -- and I guess I think I dealt with this in a  
9 prior KEIP opinion -- historically, the debtor had a variable  
10 pay approach and complicated by the fact that at the upper  
11 levels it included stock and things from Ally, which are no  
12 longer part of it, and so that the fact that there were  
13 increases in base level -- base pay, I mean, it seemed to me  
14 the argument was that reflected the changes in corporate  
15 structure relationship with Ally, the separation really from  
16 Ally.

17 MR. MASUMOTO: Your Honor, I don't dispute that  
18 characterization. The problem is that there was certainly no  
19 evidence from our standpoint after looking at the spreadsheet  
20 as to the justification for the increases, particularly in one  
21 case where there was, you know, the two-thirds increase.

22 Now, part of the problem with such -- with the  
23 increase in the base salary is that it's another way of  
24 avoiding having to increase the amount of the incentive pay.  
25 If you want to present your incentive pay as being somewhat

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1 minimal, one way of doing it is increase the base pay and,  
2 therefore, not subject to any of the incentivizing words.

3 THE COURT: And one of the things I looked at at the  
4 time of the first KEIP motion was aggregate; what's the  
5 aggregate compensation the people are going to be entitled to.

6 MR. MASUMOTO: Right.

7 THE COURT: Compared to historic.

8 MR. MASUMOTO: That's correct. And the spreadsheet  
9 does, in fact, as indicated, it has 2011 and 2012, and I'll  
10 note the percentages that are on there. However, the 2012  
11 compensation, the variable aspect of it, which was incentive,  
12 was based on the sale which I think distorts the sort of  
13 incentive base comparison and the percentage increase.

14 THE COURT: The sale was very successful as it turned  
15 out.

16 MR. MASUMOTO: Extremely. And, Your Honor, and that's  
17 why I wanted to indicate that.

18 In comparing it to 2012, it may not be an accurate  
19 sort of reflection of what should be properly incentivizing to  
20 these individuals.

21 Now, the other characteristic that's not typical when  
22 looking at 503(c)(1) considerations is that in this case, as  
23 the reply indicated, these individuals will also receive a  
24 severance. Now, they represented that, in fact, the severance  
25 payments will be subject to (c)(2). Now, Your Honor, our

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1 office and the debtors have had various discussions on this  
2 because I believe chambers was copied on letters whereby they  
3 were offering severance programs to various individuals  
4 pursuant to the original first-day wage orders.

5 Now, one of the complications that came up for  
6 purposes of severance is how do you calculate the (c)(2)  
7 limitation on the first day of the year, where (c)(2) says, you  
8 know, ten times the amount give within that year. Obviously,  
9 there's no comparison. So we had some consideration. So even  
10 at this point it's not clear how the (c)(2) limitation will  
11 apply and the amount that will be applicable --

12 THE COURT: Don't ask me to decide more than I need to  
13 do right now.

14 MR. MASUMOTO: Your Honor, the only problem is that  
15 we're somewhat -- we're sort of in a difficult position whereby  
16 the first time they came in for a KEIP it was without reference  
17 to the -- without knowing the amounts under the AIP. And from  
18 our perspective, that overall picture we thought was necessary  
19 to establish what exactly the proper compensation was. And in  
20 this case -- as Your Honor knows, in many cases where there's  
21 liquidation, a liquidating debtor, frequently incentive plans  
22 may, essentially, replace severance payments and so forth. So  
23 here, where we know -- in fact, the debtors have represented  
24 that not only will they get a KEIP for this year, but an  
25 undisclosed amount for severance, which is, obviously, not

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1 included as part of the severance package --

2 THE COURT: Well, they won't get it unless it's  
3 approved.

4 MR. MASUMOTO: I assume that's the case, but without  
5 knowing the exact amount --

6 THE COURT: Is that true, Mr. Marinuzzi, do you agree?

7 MR. MARINUZZI: Your Honor, we'll come back to this  
8 Court for severance for these covered employees.

9 MR. MASUMOTO: Very well, Your Honor. Once again, I  
10 did want to mention that, from our perspective, we tried to  
11 look at the entire compensation picture, which includes in this  
12 case the severance amounts that are likely to be awarded.

13 THE COURT: I'm not faulting you for the position that  
14 the U.S. Trustee has taken on this. Certainly -- I mean, I  
15 think the reply -- you successfully drew out a lot more  
16 information.

17 MR. MASUMOTO: Thank you, Your Honor.

18 The remaining two points that I would like to make is  
19 that, as detailed, I think, both in the original motion and in  
20 the reply, the KERP participants in this case are also -- also  
21 have incentives. And in fact, I would suggest that many of the  
22 underlying goals that they're hoping to achieve, in terms of  
23 net recoveries and recovery rates and so forth, would very  
24 likely depend very much upon these employees, both, you know,  
25 that are included as part of the KERP, as well as the KEIP

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1 employees.

2 But the KERP participants are also being incentivized  
3 to achieve these same recovery goals. And so part of our  
4 concern was how was there sufficient -- did they carry their  
5 burden to determine that the amount of increase or the awards  
6 being attributable to the KEIP for, essentially, the same  
7 goals, are meritorious. I mean, as I think indicated in our  
8 chart, over forty-three percent of the entire KEIP award are  
9 going to 8 individuals, as compared to 155.

10 THE COURT: Plus the forty-seven percent.

11 MR. MASUMOTO: Thank you, Your Honor.

12 So, once again, we felt that notwithstanding the  
13 information that we did receive, we're still not -- we weren't  
14 happy about the evidence that indicated that so much of the  
15 benefits should accrue in favor of the key percipients (sic).

16 And I think, although, counsel, Mr. Marinuzzi did  
17 address my final point, which is sort of the, from our  
18 standpoint, the lack of context or historical basis, they did  
19 allude to the 127 million dollar sale. I'm not sure, again,  
20 whether they can disclose the amount, but we were looking for  
21 evidence of how they arrived at the metrics they did; the sixty  
22 percent or ninety percent, that they were using, was there any  
23 sort of historical basis or evidence to show that the current  
24 metrics, as Your Honor pointed out, are especially  
25 incentivizing. We felt that we weren't entirely satisfied with

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1 the information given.

2 And for example, with respect to the executive KEIP,  
3 the targeted amounts I believe was 158 million dollars, and the  
4 threshold amounts and so forth, these amounts are supposedly  
5 for the periods March 1st through June 30th. Well, they  
6 certainly have some historical perspective or experience with  
7 respect to January and February. And I guess from our  
8 standpoint that information might -- should be disclosed to be  
9 able to determine whether or not the current targets are  
10 sufficiently incentivizing.

11 THE COURT: Have you asked for that information?

12 MR. MASUMOTO: No, Your Honor, we did not.  
13 Unfortunately, there were a number of things that we were  
14 focused on and we did not ask for that specific information,  
15 but we do believe that, certainly, that information, I presume,  
16 would have had some influence in the amounts that they selected  
17 as their target and threshold amounts.

18 And finally, with respect to the budget. As Your  
19 Honor knows, we received it, I guess, Tuesday; we actually  
20 didn't look at it until yesterday. Those budget amounts, which  
21 haven't been disclosed, again, part of the concern is -- I  
22 don't know to what extent Your Honor's been involved in sort of  
23 budgeting process, but I know from my experience of  
24 participating budget fee committees that the budgets are always  
25 high and, yes, they get exceeded all the time. And the concern

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1 is -- notwithstanding the representations of the parties, there  
2 was concern about whether or not some of these targeted amounts  
3 are with sufficient cushion. I did not think to ask the  
4 question Your Honor did, which was what role the insiders had  
5 in developing the budgets. But we did have concerns since,  
6 once again, we didn't have the information, at least up until  
7 yesterday, as to the specific budget expense amounts. And  
8 again, notwithstanding the statements here today, our office  
9 was not entirely satisfied with the -- I guess the proof to  
10 establish the rigorous standards set for the budget.

11 Thank you, Your Honor. If you have any questions?

12 THE COURT: Well, here's my question to both of you.  
13 The debtor has put forward declarations; they need to offer  
14 them in evidence. I don't know whether you want to cross-  
15 examine witnesses, whether you have other evidence that  
16 you're -- I don't know. Have you discussed this, Mr.  
17 Marinuzzi, how you were going to proceed with the evidence?

18 MR. MASUMOTO: Your Honor, I did indicate to Mr.  
19 Marinuzzi that I have no intention of cross-examining the  
20 witnesses.

21 THE COURT: You're certainly free to do that. I mean,  
22 I want to make that clear.

23 MR. MASUMOTO: Right. Our position is that they have  
24 a burden. And from our standpoint, it's whether or not they  
25 sufficiently carried it. I believe that based upon the

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1 declarations made and which, presumably, will be offered into  
2 evidence, as well as some of the evidence that Your Honor and  
3 our office has, which has not been made public --

4 THE COURT: And I want to discuss how we deal with  
5 that. The debtor has provided to the Court, to the committee,  
6 and to the U.S. Trustee certain information which I have  
7 reviewed. And, Mr. Masumoto, I certainly want to hear from  
8 you. My review of the information and the format in which it  
9 is presented would indicate it would be entitled to be sealed  
10 under 107(b). I'm quite -- I'm always very uncomfortable about  
11 deciding anything on the basis of evidence that is not part of  
12 a public record, but I do see, whether it's the spreadsheets  
13 that you were given earlier, that showed the amounts that would  
14 be targeted to specific individuals or the most recent  
15 information, which I received yesterday, and it was in the form  
16 of seven pages; a cover letter and seven pages. First is --  
17 asset disposition metrics is the first section. And then the  
18 second section is performance against budget metric. What's  
19 your position about maintaining confidentiality?

20 MR. MASUMOTO: Your Honor, if I may address the  
21 spreadsheet. I'm sorry.

22 MR. MARINUZZI: Your Honor, on these PowerPoint  
23 presentations --

24 THE COURT: Yes.

25 MR. MARINUZZI: -- with the exception of the last



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1 page, just -- Your Honor, the genesis of this was my hearing  
2 prep, and I thought it would be useful to actually distribute  
3 it.

4 THE COURT: So you have no objection other than the  
5 last page.

6 MR. MARINUZZI: Other than the last page, where we can  
7 redact the categories, I'm happy filing this, making it a  
8 public document.

9 THE COURT: All right.

10 MR. MARINUZZI: With respect to the second separate  
11 page, this is taken right out of the motion papers.

12 THE COURT: Fine.

13 MR. MARINUZZI: So there's nothing secretive in here.

14 THE COURT: Fine, okay.

15 MR. MARINUZZI: Sorry.

16 THE COURT: I think -- Mr. Masumoto, would you be  
17 satisfied with respect to that last page if it's redacted in  
18 the fashion that Mr. Marinuzzi --

19 MR. MASUMOTO: Yes, Your Honor, I believe that that's  
20 satisfactory.

21 THE COURT: Okay. Now, you were starting to say about  
22 the spreadsheet that showed the individuals.

23 MR. MASUMOTO: Well, Judge, as to the spreadsheet, as  
24 a general overall principle I do agree with the idea of  
25 protecting the individual; specific compensations of particular

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1 employees to the extent that they can aggregate the figures,  
2 but keep some of the statistics in place, I think that would be  
3 helpful. That may -- I mean, again --

4 THE COURT: Here's what I want would --

5 MR. MASUMOTO: -- the underlying principle of  
6 protecting individuals is fine.

7 THE COURT: Here's what I would like you to do with  
8 respect to that, is to confer and see whether the two of you --  
9 I would think that the two of you could agree on some aggregate  
10 numbers from that spreadsheet that would not show amounts to  
11 specific individuals, or that couldn't easily be deciphered as  
12 to who the individuals were.

13 Obviously, you have the full document, I have the full  
14 document, the committee has the full document, but I am  
15 sensitive to that information being disclosed about each  
16 individual. One, one employee doesn't know what the other is  
17 going to be getting. They want to maintain -- keep these  
18 employees for the period of time they need them. And I have no  
19 doubt that competitors might well be looking at this  
20 information and use it as a basis for deciding which employees  
21 they want to solicit away right now. So I do think it's  
22 market-sensitive information that would be entitled to  
23 protection.

24 I do think that you probably can come to an agreement  
25 on disclosure of some of the information that's there. You're

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1 willing to try and do that, Mr. Masumoto?

2 MR. MASUMOTO: Yes, of course, Your Honor.

3 THE COURT: All right. So what I'd like to do then,  
4 Mr. Marinuzzi, is have you offer in evidence whatever it is  
5 you're offering, and once, again, you know at that point Mr.  
6 Masumoto has indicated he doesn't intend to cross-examine, but  
7 I intend to just ask that question to get a clear record.

8 Have you when you put in whatever you do rest, and  
9 then I'll ask Mr. Masumoto what evidence he wants to offer.  
10 And if it's none, that he rest, and we'll see where we go from  
11 there.

12 MR. MASUMOTO: Very well, Your Honor. Thank you.

13 THE COURT: Thank you very much, Mr. Masumoto.

14 MR. MARINUZZI: Your Honor, I'm sorry, we're just --

15 THE COURT: That's okay.

16 MR. MARINUZZI: We pre-marked the declarations --

17 THE COURT: Sure.

18 MR. MARINUZZI: -- as Debtors' Exhibit 1 through --

19 THE COURT: Yeah.

20 MR. MARINUZZI: -- I believe 5. And I just want to  
21 make sure I have a copy for Your Honor and a copy for one of  
22 your clerks.

23 THE COURT: Thank you.

24 (Pause)

25 MR. MARINUZZI: Your Honor, I presented to the Court

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1 and would move into evidence the declaration of John Dempsey in  
2 support of the motion; that's Debtors' Exhibit 1.

3 THE COURT: All right. And that's -- it was filed on  
4 March 20th, 2013, and it's ECF Number 3281?

5 MR. MARINUZZI: That's correct, Your Honor.

6 THE COURT: Any objections?

7 MR. MASUMOTO: No objections, Your Honor.

8 THE COURT: All right. The Dempsey declaration is in  
9 evidence.

10 (Declaration of John Dempsey was hereby received into evidence  
11 as Debtors' Exhibit 1, as of this date.)

12 MR. MARINUZZI: I would move Debtors' Exhibit 2, which  
13 is the declaration of Ronald Greenspan.

14 THE COURT: That -- you didn't hand that to me. I  
15 have 1, 3, 4 and 5.

16 MR. MARINUZZI: Your Honor, I was trying to make sure  
17 that the Court was paying attention.

18 THE COURT: Wait, one of my clerk's has it. All  
19 right, I got it. All right. I have the declaration of Ronald  
20 Greenspan, filed March 20th, 2013, and it's ECF Docket 3282.  
21 Mr. Masumoto?

22 MR. MASUMOTO: No objection, Your Honor.

23 THE COURT: All right, that's in evidence as well.

24 (Declaration of Ronald Greenspan was hereby received into  
25 evidence as Debtors' Exhibit 2, as of this date.)

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1 MR. MARINUZZI: Your Honor, I'd like to move into  
2 evidence Debtors' Exhibit 3, the declaration of Tammy  
3 Hamzhepour, in support of the motion, it's Docket Number 3283.

4 THE COURT: Mr. Masumoto?

5 MR. MASUMOTO: No objection, Your Honor.

6 THE COURT: All right, that's in evidence as well.  
7 (Declaration of Tammy Hamzhepour was hereby received into  
8 evidence as Debtors' Exhibit 3, as of this date.)

9 MR. MARINUZZI: Your Honor, Debtors' Exhibit 4, would  
10 be the declaration of Pamela West in support of the motion,  
11 Docket Number 3284.

12 MR. MASUMOTO: No objection, Your Honor.

13 THE COURT: All right, that's in evidence.  
14 (Declaration of Pamela West was hereby received into evidence  
15 as Debtors' Exhibit 4, as of this date.)

16 MR. MARINUZZI: And Docket -- I'm sorry, Exhibit  
17 Number 5, Debtors' Number 5, would be the supplemental  
18 declaration of Ronald Greenspan, Docket Number 3379.

19 MR. MASUMOTO: No objection, Your Honor.

20 THE COURT: All right, that's in evidence as well.  
21 (Supplemental declaration of Ronald Greenspan was hereby  
22 received into evidence as Debtors' Exhibit 5, as of this date.)

23 MR. MARINUZZI: Thank you, Your Honor. And as it  
24 relates to the PowerPoint presentation with the redaction we'll  
25 redact it and submit it to chambers as Debtors' Exhibit 6, if

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1 that's okay with Mr. Masumoto.

2 THE COURT: All right. Mr. Masumoto, is that  
3 acceptable?

4 MR. MASUMOTO: That's acceptable.

5 (PowerPoint with redaction was hereby received into evidence as  
6 Debtors' Exhibit 6, as of this date.)

7 MR. MARINUZZI: And the separate slide, which his on  
8 the -- on the executive KEIP, we'll mark that as Debtors'  
9 Exhibit 7.

10 THE COURT: Okay, thank you.

11 MR. MASUMOTO: No objection, Your Honor.

12 THE COURT: All right.

13 (Separate slide regarding KEIP was hereby received into  
14 evidence as Debtor's Exhibit 7, as of this date.)

15 MR. MARINUZZI: Your Honor, I don't know if Your Honor  
16 would like me to respond to some of the points that Mr.  
17 Masumoto raised.

18 THE COURT: No. First I want to know is there any  
19 other evidence you want to introduce.

20 MR. MARINUZZI: That's all we have, Your Honor.

21 THE COURT: Do you rest?

22 MR. MARINUZZI: Yes, we do.

23 THE COURT: All right. Mr. Masumoto, do you wish to  
24 cross-examine any of the declarants?

25 MR. MASUMOTO: No, Your Honor.

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1 THE COURT: Is there any evidence you wish to offer?

2 MR. MASUMOTO: No, You Honor.

3 THE COURT: Do you rest?

4 MR. MASUMOTO: Yes, Your Honor. Thank you.

5 THE COURT: All right. The one issue I would like you  
6 to address -- now, it's a point that Mr. Masumoto raised near  
7 the end of his presentation -- is the allocation of benefits  
8 under the plans. And I understand the complexity and  
9 challenges in tasks remaining, but I think it's, by my  
10 reckoning, 46.69 percent of the KEIP -- 46.69 percent of the  
11 total awards would go to the recipients of the two KEIPs, with  
12 14.34 for the two executive KEIP participants -- it's  
13 approximately 1.1 million dollars -- and 32.35 percent for the  
14 six estate KEIP participants, 2.52 million dollars.

15 And there's 155 participants in the KERP. And is  
16 that -- the question I have is is that an appropriate  
17 allocation of benefits to be awarded to participants?

18 MR. MARINUZZI: Your Honor, we submit that it is, and  
19 the company's advisors and the company's management, when they  
20 sat down to create this program, they looked at some of the  
21 issues Your Honor referred to. They have to keep employees at  
22 the company. This was a company that had 3,000-plus employees.  
23 They are down to 280, I believe. And they're trying to retain  
24 155 that they've determined to be key. And so, as part of the  
25 analysis, they had to determine what it was that would be paid

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1 under this program to keep these employees where they were  
2 through year-end.

3 And part of the breakdown is just the natural  
4 breakdown of the general compensation for the individuals that  
5 make up the KEIP and make up the KERP. And while, there's  
6 always, I would say, a retentive aspect to an incentive plan --  
7 it's just by nature -- you have to figure out, if you create  
8 incentives, the incentive has to be sufficiently valuable to  
9 actually motivate the executives to try to achieve them.

10 And so, when you look at the compensation paid  
11 historically to these individuals that are covered by the KEIP,  
12 and we spoke a little bit about one specific example, where  
13 base compensation went up sixty-three percent for one  
14 individual, but what we ignore for that same individual is the  
15 fact that, versus 2011 compensation where there was no sale,  
16 it's flat. Versus 2012, with understandably the KEIP award for  
17 the success of the sale, it's down twenty-one percent.

18 And so if you were to say, let's just take the same  
19 pot of money and split it fifty-fifty, as between the KERP and  
20 the KEIP, you'd wind up having a KERP where people might be  
21 overcompensated versus their traditional annual compensation,  
22 and you might have executives who will say, those are really  
23 terrific incentives, but I'm just -- I'm not motivated to try  
24 to achieve them, because I'm not going to work triple time to  
25 try to get Fannie Mae -- I'm sorry, Ginnie Mae -- to do X, Y



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1 and Z, if I'm actually not going to make any money.

2 So the reality is you've got to set your program in a  
3 way that incentivizes people because there's actually something  
4 to get for achieving the incentive. I think that explains more  
5 than anything the natural breakdown of the percentages. It's  
6 just the roles these individuals play.

7 THE COURT: Okay. Mr. Masumoto, anything you want to  
8 add? Mr. Zide --

9 MR. ZIDE: Yes, just --

10 THE COURT: -- go ahead.

11 MR. ZIDE: One other point which the debtors could  
12 probably elaborate on a bit more is that I think these numbers  
13 are a bit skewed, because many of the KERP employees will not  
14 be there by the end of the year. So these amounts do not  
15 reflect full-year payments. Some of them reflect people who  
16 were going to be there for three months, four months, five  
17 months, as long as they're needed throughout the program. So  
18 on a year-to-year basis comparison, I believe the percentages  
19 you're referencing will change somewhat dramatically.

20 I think -- just going off my recollection -- I think  
21 only about a hundred of those KERP employees will be there by  
22 the end of the year. If you want to elaborate or add any more,  
23 but those numbers are not really reflective of what's going on.

24 MR. MASUMOTO: Brian Masumoto of the Office of the  
25 United States Trustee. Your Honor, just one brief comment. As

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1 in our papers, we did provide a little bit of the breakdown  
2 that Your Honor referenced, and in our table, just as you  
3 indicated, I do want to make clear that to Mr. Zide's point,  
4 that in fact, the figures we use are based on an annualized  
5 figure, because we're aware that the -- that some of the people  
6 would not be there, but based upon the figures we were given,  
7 we try to, on an annual basis, indicate the percentages.

8 And as Your Honor indicated, two individuals, who are  
9 representing 1.2 percent of the 163-member group, is getting  
10 14 -- over 14 percent. And the six members, who are  
11 representing 3.6 percent of that group, is getting about 32  
12 percent.

13 One thing I would like to mention is that, in fact --  
14 in terms of whether or not this is a natural breakdown or so  
15 forth, if in fact we're not -- the Court were not satisfied  
16 that these were sufficiently incentive-based, the 503(C)(i),  
17 which has a ten percent limitation on the amount of the  
18 payment, would, based upon the current figures -- I know -- I  
19 don't know if it fully takes into account the departures of the  
20 individuals, but if we assume award figure of 4.4 for the 155,  
21 the mean calculation for 4.4 would be approximately 28,387  
22 dollars. So ten times that amount would be an annual amount  
23 under that limitation of 283,870 dollars.

24 So that would be the -- in terms of whether or not  
25 Congress thought was ever was appropriate for a retentive

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1 program, the limitation would be in the neighborhood on an  
2 annual basis for an insider of about 283,000 dollars, so and --  
3 whereas what's projected here on an annual basis as I believe,  
4 2.2 million dollars to the two executives, for example.

5 So from our standpoint, I'm not sure what a natural  
6 breakdown in allocation should be, but given the concerns that  
7 in fact since the KERP employees are in fact highly  
8 incentivized to achieve some of the same goals that are being  
9 set for the executives, that perhaps the disproportion  
10 allocation to the KEIP recipients are not appropriate.

11 THE COURT: But you -- when I thought about this,  
12 because I was concerned about the spread. Given the complexity  
13 of these cases and of the challenges for the tasks remaining,  
14 the importance of executive leadership in achieving the goals.  
15 So the fact that the same things are measured for KERP and KEIP  
16 participants doesn't surprise me at all. It does seem to me  
17 that you want the goals of the enterprise aligned so that  
18 everybody is trying to achieve the same set of goals. The fact  
19 that the executives are better rewarded if those goals are  
20 achieved is not particularly surprising to me.

21 But that isn't going to happen unless all of the  
22 employees within the enterprise are pulling in the same  
23 direction trying to get those things accomplished. And that  
24 was my reaction to that. When I thought -- because I was --  
25 you made the point in your brief that I focused on this issue

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1 of the allocation. And the more I thought about it, it did  
2 seem to me that, well, that's not at all surprising.

3 MR. MASUMOTO: Your Honor, you're exactly correct that  
4 the interests should be aligned. And part of the problem, once  
5 again, I do -- I sort of revert back to the burden of proof,  
6 I'm not sure that I've had sufficient -- I mean, there are  
7 certain types of incentives where you could clearly say, okay,  
8 we know that the executives clearly are providing the extra  
9 benefit.

10 Here, where the goals are aligned, and they're in fact  
11 the day-to-day on-the-ground work are being done by the  
12 presumably 155 key employees, it's not quite clear to me the  
13 added value that's being added by the KEIP insiders that would  
14 justify the high -- the disproportionate allocation.

15 THE COURT: All right. Anything else you want to add?  
16 All right. I'm going to take the matter under submission. I  
17 expect to be able to rule within a couple of days, okay. I  
18 know it's important to the debtor to know one way or the other  
19 what's happening here and I don't expect there'll be a long  
20 delay.

21 MR. MARINUZZI: Thank you, Your Honor.

22 THE COURT: Okay.

23 MR. MARINUZZI: And we'll get the additional exhibits  
24 to the Court tomorrow morning.

25 THE COURT: Okay, and thank you very much to

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1 everybody, okay.

2 MR. MARINUZZI: Thank you.

3 IN UNISON: Thank you, Your Honor.

4 THE COURT: Thank you, all right, we're adjourned.

5 UNIDENTIFIED SPEAKER: For the day.

6 THE COURT: For the day.

7 (Whereupon these proceedings were concluded at 3:57 PM)

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C E R T I F I C A T I O N

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I, Ellen Kolman, certify that the foregoing transcript is a  
5 true and accurate record of the proceedings.

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